

# **Exhibit M**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**TERESA LARA BENAVIDEZ, MARIA DE LOURDES GALVEZ, JAMIE HUERTA, FLORA ZURITA, MARIA DE LOURDES VASCONEZ ALARCON, LABRARMY GARCIA, and ESTABAN NADER, on behalf of themselves and all others similarly situated,**

**Plaintiffs,**

**-against-**

**PLAZA MEXICO, INC., PIRAMIDES MAYAS INC., MAMA MEXICO MIDTOWN REALTY LLC, SHADDAI INC., MAMA MEXICO ENGLEWOOD REALTY LLC, JUAN ROJAS CAMPOS, VINCENTE ROJAS, MIGUEL ROJAS, LAURA CHAVEZ, JOSE LUMBARDI and FREDDY RAYMONDI,**

**Defendants.**

09 CIV 5076 (AKH)(THK)

**DECLARATION OF  
THERESA LARA  
BENAVIDEZ**

I, Theresa Lara Benavidez, declare, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the following is true and correct:

1. I worked for the Mama Mexico restaurant located at 2672 Broadway, New York, New York, from approximately June 5, 2008 through approximately May 1, 2009.

2. During my entire employment at Mama Mexico, I worked as a busser.

**UNPAID WAGES**

3. During my employment at Mama Mexico, Mama Mexico consistently delayed paying me any wages at all, sometimes for up to 6 months. During these periods, the only pay I took home was the tips I earned each shift.

4. When Mama Mexico ultimately did pay me wages for the hours I had worked, the amount covered only part of the wages Mama Mexico owed me and did not cover all of the hours that I worked, including hours over forty for which I should have been paid an overtime

premium. It also did not include an extra amount for liquidated damages or interest.

5. The wages that Mama Mexico paid me were at a flat rate of \$30 for each, on average, 8 hour shift that I worked.

6. I regularly worked an average of approximately 7 shifts each week (or approximately 57 hours).

7. The flat rate that Mama Mexico paid me also did not include the premium pay I earned for the hours I regularly worked over 40 each week.

8. Every day I worked more than 10 hours in a single day. Mama Mexico never paid me an extra hour of wages at the minimum wage rate for each day during which I worked more than 10 hours.

#### **TIP POOLING**

9. During the entire course of my employment at Mama Mexico, I was required to pool all of the tips I received each shift with the tips earned by other employees. The employees then distributed the tips to the staff.

10. It is my understanding that the tip pooling policy was mandatory and was instituted by management. I was never consulted about the tip pooling policy and had no input into how my tips would be distributed.

11. Mama Mexico distributed a portion of the servers' and bussers' tips to managers each shift. I know this because Armando Rojas, a manager, received a percentage from the tip pooling system during those shifts that he worked on the weekend. For example, in approximately November of 2009, I saw the cashier taking money from the bag of the tip pooling system to give it to Armando Rojas. I went up to the cashier and asked her why she was giving him \$20 from our money. She responded by saying that Vicente Rojas had given orders

directly to her to give him money from the tips. I believe other managers received tips in similar fashion.

12. The managers who received tips did not regularly interact directly with customers. These managers occasionally, maybe once a shift, had some very insignificant interactions with customers when the restaurant was very busy, but this was very rare.

13. The managers who received tips had the power to hire and fire employees and to discipline them. For example, I personally saw him hiring some of the staff, and some of my co-workers through out my employment in Mama Mexico. These employees personally told me that Armando hired them. He also personally directed me to clean tables, take orders, clean the bathrooms, and water the plants, among other things.

14. Mama Mexico distributed a portion of my tips to a position called "the extra" each shift. The extra's duties involved maintaining and restocking the bar, stocking the silverware, plates, and tablecloths, and transporting ice and dishes from one station to another. They never interacted directly with customers.

#### **TIME-KEEPING**

15. It is my understanding that, for much of my employment, Mama Mexico did not maintain a system for recording the hours that I worked each day. I was not required to sign in or sign out each day or log in or out of any time-keeping system.

#### **UNIFORMS**

16. It was Mama Mexico's policy that all bussers wear: a black skirt, white button-down shirt, a pin, a "corbatin" (a traditional Mexican bowtie), and an apron on which the restaurant's name was printed

17. It was Mama Mexico's policy that all employees purchase, launder, and maintain their uniforms at their own expense. I had to purchase three aprons and three corbatins for approximately \$105. I regularly had to pay to have the apron and tie laundered and was not reimbursed for these costs. I paid approximately \$10 each week.

### **OTHER DEDUCTIONS**

18. It was Mama Mexico's policy and practice to require bussers to pay for breakages or spoilages out of their own pockets. For example, Marcos once required me to pay \$15 from my tips when I accidentally broke three cups.

### **COMPLAINTS**

19. Approximately three times in December 2008, and in February 2009, I complained to Vicente Rojas about not being paid properly. In response, he ignored my complaints and told me "Next week, I will pay you," and "For the moment I cannot pay because of the economy" He also said something like "Sorry , but this week we paid all the employees from New Jersey. For this reason we do not have money to pay [the New York employees] this week."

### **RETALIATION**

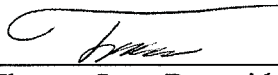
20. On several occasions at different times, managers threatened to fire employees and prevent them from working in the restaurant industry if employees complained that the restaurant was not paying them correctly. For example, in approximately November, 2008, Vincente Rojas threatened employees who had complained about their payment, saying that he would "take care of them" and that they would never have another job in the restaurant industry again. Vincente Rojas made clear to the restaurant's employees that he knew a lot of people and was well-connected, and would therefore know if any of them was complaining about their jobs

in Mama Mexico. He implied that he would ensure that anyone who complained would not find employment with his connections in the restaurant industry. He also said that if anyone complained about the work conditions at Mama Mexico and then listed him as a reference, he would let their employer know that they were poor workers. As a result of Vincente Rojas's threats, I did not report the fact that I had not been paid to the authorities, even when, in August 2008, my friend Liliana, a bartender, invited me to go with her to the Department of Labor

21. After this lawsuit was filed, on approximately July 2009, I met with Maria Lourdes Galves, Jamie Huerta, and Maria Lourdes Alarcon Vasconez. I heard from Maria Lourdes Galves, a server, that Mama Mexico managers, including Isaiah Canalizo, Armando Rojas and Jose Lombardi, made derogatory comments about the individuals who brought the lawsuit. I also heard the managers say that the claims of the workers who had brought the lawsuit were worthless and that there was no case. They specifically stated that the case was not going to go anywhere, and that others had gone up against them, and lost, and that the same result would happen this time.

22. The managers' threats, including those of Isaiah, Armando, and Jose Lombardi, have had a chilling effect on employees of Mama Mexico and have affected their decision to join the lawsuit. I know this because in approximately July 2009 when I spoke to Maria de Lourdes Galves, a server, we both expressed that we were intimidated to join the lawsuit.

Dated: New York, New York  
Diciembre 01, 2009

  
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Theresa Lara Benavides